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OFFICE OF PETITIONS

ON PETITION

In re Application of
James C. Slater et al.
Application No. 09/263,163
Filed: March 5, 1999
Attorney Docket No. NOMA-110

This is a decision on the petition under 37 CFR 1.137(b), filed September 13, 2002, to revive the above identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision dismissing the petitions must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b). This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed March 27, 2001. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been filed, the application became abandoned June 28, 2001. Accordingly, a Notice of Abandonment was mailed November 6, 2001.

Petitioner files the instant petition and request for continued examination under 37 CFR 1.137(b) the requirements of which have not been met.

The request for continued examination (RCE) of this application under 37 CFR 1.114 is improper since prosecution in the application had not been closed thus the required reply is missing and the petition not grantable.

In view of the above, this application remains abandoned.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

DOCKETED

Date: 3.31.03

Initials: DB

It should also be noted that, there is no indication petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (703) 305-4497.



Patricia Faison-Ball
Petitions Attorney
Office of Petitions

cc:
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SAN JOSE, CA 95113

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